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14 UNITED STATES BANKRUPTCY COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 In re

17 GERALD ARMSTRONG,

18 Debtor

19) CASE NO. 95-10911 aj
20)
21) CHURCH OF SCIENTOLOGY
22) INTERNATIONAL'S
23) MEMORANDUM OF POINTS AND
24) AUTHORITIES IN SUPPORT OF
25) MOTION FOR RELIEF FROM
26) STAY
27)
28) [11 U.S.C. §362(d)(1)]
DATE: May 25, 1995
TIME: 9:00 a.m.
CTRM: Hon. Alan Jaroslovsky

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I. INTRODUCTION

The debtor, Gerald Armstrong ("Armstrong"), has been delaying resolution of state court litigation arising out of his breaches of a settlement agreement (the "Agreement") between the debtor and the Church of Scientology International ("the Church"). Church of Scientology International v. Gerald Armstrong, et al., Marin County Superior Court Case No. 157 680. In that action, the Church sought and obtained a preliminary injunction and summary judgment on two breach of contract claims. The Church here requests relief from the automatic stay provisions of 11 U.S.C. §362 so that pending, fully briefed, dispositive motions determinative of the state law claims can be decided by the superior court. The Church is not seeking with this petition to enforce any of its monetary claims against Armstrong, but merely to obtain a determination as to the extent of Armstrong's liability to the Church, and to obtain a necessary permanent injunction which is unrelated to the disposition of Armstrong's assets.¹

II. STATEMENT OF FACTS

A. The Agreement

In 1986, Armstrong, an excommunicated Scientologist, settled ongoing litigation and acrimony with the Church.² With the aid and advice of three attorneys, he signed a settlement agreement ("the Agreement") [Ex. A to Request for Judicial Notice, Second Amended Complaint, ¶ 16, 18], and accepted approximately \$800,000 from the Church.³ The Agreement

¹ Also pending before the Marin Court is a consolidated action against Armstrong and others for fraudulent conveyance. Properly, this claim -- that Armstrong fraudulently transferred property worth more than \$500,000 to others prior to incurring the substantial debt to the Church -- is a claim now belonging to the trustee in bankruptcy, who should seek to recover those assets for the bankruptcy estate.

² In 1982, Armstrong, who had been a Church member for some years, was excommunicated from the Church after Church members discovered that he had stolen hundreds of confidential documents. The case which was settled in 1986 was the Church's claim against Armstrong for conversion, and Armstrong's cross-complaint.

³ The settlement agreement provided for a joint settlement with other cases, and the exact portion of the settlement fund which Armstrong received was determined in a secret agreement between Armstrong and his lawyer. Documents filed in the state court action indicate that the amount Armstrong received was \$800,000. [Bartilson Declaration, Ex. A.]

1 included specific provisions designed to guarantee that new actions were not spawned or
2 encouraged by the conclusion of the old one. Armstrong, who had been actively pursuing a
3 career as an anti-Scientology "expert" and paralegal, agreed, inter alia, that he: (1) would not
4 provide voluntary aid or advice to others litigating against the Church;⁴ (2) would not create or
5 publish, or assist another in creating or publishing, any media publication or broadcast
6 concerning information about the Church of Scientology, L. Ron Hubbard, or any other persons
7 or entities released by the Agreement;⁵ (3) would maintain "strict confidentiality and silence"
8 with respect to his alleged experiences with the Church or any knowledge he might have
9 concerning the Church, L. Ron Hubbard or other Scientology-related entities and individuals;⁶
10 and (4) would not keep or disclose any documents which related to the Church or other protected
11 entities and individuals.⁷ The Agreement provided that Armstrong would pay the Church
12 \$50,000 in liquidated damages for every prohibited disclosure.

13 In 1990, Armstrong had a "vision from God," and gave his house and money to Michael
14 Walton (his lawyer), his corporation to his friends, and more money to his girlfriend. [Ex. B
15 to Request for Judicial Notice, Complaint for Declaratory Relief from Fraudulent Conveyance.]
16 Then he began deliberately breaching the Agreement, and sent a letter to one of the Church's
17 lawyers offering to "settle" his disagreement with the Church, and that of a South African
18 plaintiff, for an unspecified amount of money. [Declaration of Laurie Bartilson, Exhibit B.]

19 The Church refused to be blackmailed. Between August of 1990 and September of 1991,
20 Armstrong breached the Agreement at least 12 times, executing declarations on behalf of anti-
21 Scientology litigants, filing the confidential Agreement in open court files, and working as a
22

23 ⁴ See Paragraphs 7(G) and 7(H) of the Agreement [Ex. A to Ex. A to Request for Judicial
24 Notice]

25 ⁵ See Paragraph 7(D) of the Agreement, which includes \$50,000 in liquidated damages for each
26 breach of this paragraph of the Agreement [Ex. A to Ex. A to Request for Judicial Notice, ¶
27 7(D)].

28 ⁶ Id.

⁷ See Paragraph 7(E) of the Agreement [Ex. A to Ex. A, Request for Judicial Notice, ¶7(E)].

1 legal assistant on cases involving the Church and/or protected entities. [Ex. A to Request for
2 Judicial Notice, Verified Second Amended Complaint, ¶¶ 20-41.] In October, 1991, unable to
3 persuade Armstrong to stop breaching the Agreement, the Church asked the Los Angeles
4 Superior Court to enforce the Agreement and enjoin Armstrong's breaches.⁸ [Ex. C to Request
5 for Judicial Notice.] Armstrong argued successfully that the Agreement was insufficient to
6 confer continuing jurisdiction on the Los Angeles Superior Court. Hence, in February, 1992,
7 the Church commenced an action against Armstrong for breach of contract in Marin County,
8 where Armstrong resides.

9 **B. History Of The State Court Action**

10 Armstrong's uniform tactic in the state court litigation has been delay. Taking the case
11 from court to court to court, Armstrong has sought without success to have someone, anyone,
12 declare that the contract is void, and allow him to simply keep \$800,000 without keeping his end
13 of the bargain. Thus far, 4 superior court judges, and the Second District Court of Appeal have
14 all ruled that the Agreement is valid and enforceable, and that the Church is entitled to both
15 compensation for his breaches, and an injunction to prevent additional breaches. This has not
16 stopped Armstrong. As can be seen from the following itemized history of the state court
17 litigation, his latest bankruptcy court filing is simply another dilatory tactic. With summary
18 adjudication of permanent injunction and \$200,000 only two days away, Armstrong filed his
19 petition simply to (once again) buy more time.

20 **February, 1992.** On February 4, the Church filed a complaint against Armstrong for
21 breach of contract, and asked for a preliminary and permanent injunction, Church of Scientology
22 International v. Armstrong, Marin County Case No. 152 229 (the "Breach Case"). The
23

24 ⁸ A clause in the Agreement authorized the Los Angeles court to retain jurisdiction over the
25 case for just that purpose: "Notwithstanding the dismissal of the lawsuit pursuant to Paragraph
26 4 of this Agreement, the parties hereto agree that the Los Angeles Superior Court shall retain
27 jurisdiction to enforce the terms of this Agreement. This Agreement may be enforced by any
28 legal or equitable remedy, including but not limited to injunctive relief or declaratory judgment
where appropriate. In the event any party to this Agreement institutes any action to preserve,
to protect or to enforce any right or benefit created hereunder, the prevailing party in any such
action shall be entitled to the costs of suit and reasonable attorney's fees."

1 complaint was filed in Marin County, where Armstrong lived. [Exhibit D, Request for Judicial
2 Notice.] On February 27, Armstrong disqualified the Honorable William H. Stephens, the first
3 judge assigned in the Breach Case. The case was transferred to the Honorable Michael B.
4 Dufficy, delaying hearing on the Church's request for a preliminary injunction. [Exhibit E,
5 Request for Judicial Notice.]

6 **March, 1992.** On March 5, Armstrong sought and obtained another continuance
7 of the hearing on the Church's motion for preliminary injunction until March 20. However,
8 Judge Dufficy did enter a TRO preventing Armstrong from further breaching the Agreement.
9 [Exhibit F, Request for Judicial Notice.] While the Church's initial request for a preliminary
10 injunction was pending, Armstrong continued to breach the Agreement. He testified in a
11 deposition as a voluntary "expert" witness on the subject of Scientology; issued a press release
12 which discussed his claimed Scientology knowledge and experience; and discussed the same
13 topics at length with attorneys litigating against Scientology entities that were protected by the
14 Agreement. [Declaration of Laurie J. Bartilson, ¶¶ 4b -- 4d.]

15 **March 20, 1992.** Armstrong successfully moved for a change of venue, now claiming
16 that the Agreement provided that the Los Angeles Superior Court represented the proper
17 jurisdiction for an action based on the Agreement. Hearing on the motion for preliminary
18 injunction was effectively delayed for another two months. [Ex. G to Request for Judicial
19 Notice.]

20 **March - May, 1992.** While the case was being transferred to Los Angeles,
21 Armstrong breached the Agreement repeatedly, providing media interviews to Cable Network
22 News and the American Lawyer, and working as a paralegal in the case of Aznaran v. Church
23 of Scientology International et al., United States District Court for the Central District of
24 California, Case No. CV 88-1786 JMI(x). [Bartilson Dec., ¶¶ 4e, 4g, 4h.]

25 **May 28, 1992.** Finally, after two months delay, in the transferred action, now Los
26 Angeles Superior Court Case No. BC 052 395, the Honorable Ronald Sohigian, entered a
27 preliminary injunction against Armstrong which provides in relevant part:

28 Defendant Gerald Armstrong, his agents, and persons acting in concert or

1 conspiracy with him (excluding attorneys at law who are not said defendant's
2 agents or retained by him) are restrained and enjoined during the pendency of this
3 suit pending further order of this court from doing directly or indirectly any of
4 the following:

5 Voluntarily assisting any person (not a governmental organ or entity)
6 intending to make, intending to press, intending to arbitrate, or intending to
7 litigate a claim against the persons referred to in sec. 1 of the "Mutual Release
8 of All Claims and Settlement Agreement" of December 1986 regarding such
9 claim or regarding pressing, arbitrating or litigating it.

10 Voluntarily assisting any person (not a governmental organ or entity)
11 arbitrating or litigating a claim against the persons referred to in sec. 1 of the
12 "Mutual Release of All Claims and Settlement Agreement" of December, 1986.

13 [Ex. H to Request for Judicial Notice.] The Order required the Church to post a bond of
14 \$70,000 for issuance of the injunction, which the Church has posted, and which remains in the
15 custody of the court. [Ex. I to Request for Judicial Notice.]

16 June, 1992. The Church filed an amended complaint which detailed 11 additional
17 breaches of the agreement which the Church had discovered after the filing of the initial
18 complaint. [Ex. J to Request for Judicial Notice.] On June 24, 1992, less than a month after
19 the May 28 Order was issued, Armstrong asserted under oath in deposition:

20 "I have absolutely no intention of honoring that settlement agreement. I
21 cannot. I cannot logically. I cannot ethically. I cannot morally. I cannot
22 psychically. I cannot philosophically. I cannot spiritually. I cannot in any way.
23 And it is firmly my intention to not honor it.

24 Q. No matter what a court says?

25 A. No court could order it. They're going to have to kill me.

26 [Ex. K to Bartilson Dec.]

27 July, 1992. Armstrong filed a cross-complaint against the Church for breach
28 of contract and abuse of process. The Church obtained summary adjudication as to both of these
frivolous claims, but not without still more delay and expense. [Ex. K to Request for Judicial
Notice.] On July 23, 1992, Armstrong filed a notice of appeal from the order of preliminary
injunction. [Ex. L to Request for Judicial Notice.]

July - November, 1992. Armstrong continued to breach the non-disclosure portions
of the Agreement at every opportunity, videotaping a 95 minute interview with anti-
Scientologists Jerry Whitfield and Spanky Taylor, and contacting the media to discuss his

1 claimed Scientology experiences. Armstrong gave an interview to the Marin Independent
2 Journal for which he posed nearly naked with a globe clutched in his arms, and advocated the
3 renunciation of money as "valueness." [Ex. M to Bartilson Declaration.]

4 **December 22, 1992.** Armstrong sent a letter to Church counsel, which he copied
5 to 15 anti-Scientology litigants and their attorneys, in which he threatened that if the Church did
6 not pay him \$500,000 and dismiss this lawsuit, he would travel to South Africa to testify against
7 a Church of Scientology, give interviews to the media, and assist anyone and everyone opposing
8 Churches that he could locate. In that same letter, Armstrong made plain the personal contempt
9 which he had for the courts.

10 There is also, as mentioned above, the fact that in order to defend myself
11 from your attacks and to fund the defense of the litigation you have fomented I
12 must speak and must publish. I'm sure you understand that I remain completely
confident that no court, other than the odd one your mercenaries are able to
compromise with bucks, babes or bull, will order me not to defend myself.

13 [Ex. O to Bartilson Dec.]

14 **February, 1993.** Armstrong was ordered, on the Church's motion to compel, to re-
15 appear for deposition and answer dozens of relevant questions that he had refused to answer.

16 [Ex. M to Request for Judicial Notice.] Two days later, he executed a declaration in which
17 he had this to say about the preliminary injunction:

18 When I received and read the Sohigian ruling I sought to divine its
19 meaning and apply it sensibly to my life, work and legal situation. If it meant
20 precisely what it said then I would have to stop breathing because by breathing
21 I would be indirectly assisting any person litigating a claim against the
22 organization entities referred to in sec. 1 of the settlement agreement. Obviously,
23 therefore, Judge Sohigian did not mean what he stated. If he meant only that I
24 could not, as opposed to passive assistance to litigating claimants such as
breathing, living and writing magazine articles for the public generally, physically
act to help such a claimant personally, I would have to ensure every little old lady
or little old man I might escort across the road was not such a claimant. I am
certain Judge Sohigian did not intend that. . . .I do not believe such non-
assistance covenants or orders are legal or do anything but obstruct the
administration of justice and attempt to destroy mens' souls.

25 [Ex. N to Request for Judicial Notice.]

26 **March 2 & 3, 1993.** The Church filed a series of potentially dispositive motions
27 for summary adjudication. Armstrong did not file any timely oppositions to those motions. [Ex.
28 O to Request for Judicial Notice.]

1 **March 23, 1993.** Instead of opposing the Church's motions, Armstrong sought and
2 obtained a stay of proceedings in the trial court pending determination of his appeal of the
3 preliminary injunction. The Breach Case was stayed until May, 1994. [Ex. P to Request for
4 Judicial Notice.]

5 **April - July, 1993.** While the Breach Case was stayed, Armstrong continued to breach
6 the Agreement, executing declarations, giving media interviews, and providing documents to
7 anti-Scientology litigants. [Bartilson Dec., ¶ 8.] In June, Armstrong, along with anti-
8 Scientology litigant Lawrence Wollersheim, established a Colorado corporation called "Fight
9 Against Coercive Tactics, Inc." ("FactNet"). Its purpose? To create a massive electronic
10 "library" of anti-Scientology materials to be used by Scientology critics and anti-Scientology
11 litigants. Armstrong provided FactNet with scores of documents relating to his claimed
12 Scientology experiences and knowledge, all to be placed on FactNet's computer library, in
13 breach of the agreement. [Ex. T to Bartilson Dec.]

14 **July 8, 1993.** Because of Armstrong's new breaches of the Agreement while the
15 first case was stayed, the Church filed a second breach of contract case against Armstrong,
16 Church of Scientology International v. Gerald Armstrong, et al., Los Angeles Superior Court
17 Case No. BC 084642 (the "Breach II Case"). The Church promptly consolidated this action into
18 the stayed Breach Case. [Ex. Q to Request for Judicial Notice.]

19 **July 23, 1993.** The Church filed a fraudulent conveyance action against Armstrong,
20 the Gerald Armstrong Corporation, and Michael Walton, in Marin County, Case No. 157 680,
21 alleging, inter alia that Armstrong's 1990 conveyance of his residence (in which he continued
22 to live) to attorney Michael Walton was an attempt to render himself "judgment proof" prior to
23 breaching the Agreement (the "Fraud Case"). [Ex. B to Request for Judicial Notice.]

24 **August 15, 1993.** Armstrong sent a letter to the Church's counsel in which he decided
25 to proclaim that his breaches of the Agreement were not discrete, but rather a single, continuing
26 breach, which he would not end:

27 [M]y breaching of the agreement has continued unabated since 1990. It
28 is my duty, therefore, to continue that breach unabated until the agreement is
 rescinded and no longer exists to be breached. This letter also serves to advise

1 you and your client to not waste its victims "donations" sending around its
2 camera-toting PIs to try to catch me in an instant when I am doing something
3 other than my unbroken breach. If I am not heard to be breaching the agreement
4 at any moment, I have not stopped doing so, but am just between words or
5 breaching in whisper. Even in my sleep, though I may not be somniloquizing,
6 I am in every instant breaching the agreement.

7 [Ex. Z to Bartilson Dec.]

8 **August, 1993 - May 1994.** Armstrong breached the Agreement at least 14 more
9 times while the Church waited for the Court of Appeal to rule, filing declarations, giving
10 interviews, and appearing on national television. [Bartilson Dec., ¶¶ 10a-10n.]

11 In November, 1993, Armstrong filed a frivolous cross-complaint for abuse of process in
12 the Fraud Case. [Ex. R to Request for Judicial Notice.] Demurrer to most of the cross-
13 complaint was sustained in June, 1994. [Ex. S to Request for Judicial Notice.]

14 **April 5, 1994.** The Church filed a second amended complaint in the Breach Cases
15 which consolidated all of the breach of contract claims into a single complaint. The complaint
16 now alleged twenty causes of action for breach of contract. [Ex. T to Request for Judicial
17 Notice.]

18 **May 16, 1994.** The Court of Appeals affirmed the preliminary injunction issued
19 by Judge Sohigian in the Breach Cases, rejecting summarily all of Armstrong's claims that the
20 Agreement was somehow unenforceable. [Ex. U to Request for Judicial Notice.] The stay on
21 the Breach Case was promptly lifted by Judge Horowitz, and a new trial date set. [Ex. V to
22 Request for Judicial Notice.]

23 **June - August, 1994.** Armstrong continued to breach the Agreement, talking to
24 at least 5 reporters about his claimed Scientology knowledge and experiences. [Bartilson Dec.,
25 ¶¶ 11a-11c.] On August 2, 1994, the Church re-noticed the potentially dispositive summary
26 adjudication motions (which had been halted by the stay) in the Breach Case. [Ex. W to
27 Request for Judicial Notice.] Armstrong's cross-claims in the Breach Case, for breach of
28 contract and abuse of process, were summarily adjudicated in favor of the Church on August
16. [Ex. X to Request for Judicial Notice.]

September, 1994. Armstrong agreed with the Church's proposal to transfer the Breach

1 Case, transferred to Los Angeles at his behest, back to Marin County, so that the Breach and
2 Fraud Cases could be tried together. [Ex. Y to Request for Judicial Notice.] The Breach and
3 Fraud cases were consolidated in Marin County, as MCSC Case No. 157 680. Trial in the case
4 was set to commence on May 18, 1995. [Ex. Z to Request for Judicial Notice.] On
5 September 10, 1994, the remainder of Armstrong's cross-complaint in the Fraud Case was
6 summarily adjudicated in favor of the Church. [Ex. AA to Request for Judicial Notice.]

7 **November 16, 1994.** The Church re-noticed its twice-delayed motion for summary
8 adjudication of three claims for breach of contract, asking for liquidated damages for those
9 breaches.[Ex. BB to Request for Judicial Notice.]

10 **December 8, 1994.** Armstrong obtained a 13-day continuance of the hearing on the
11 Church's motion for summary adjudication, claiming that his attorney would be in trial. [Ex.
12 CC to Request for Judicial Notice.]

13 **January 27, 1995.** The court granted the Church summary adjudication of two of the
14 breach of contract claims, granting the Church \$100,000 in liquidated damages, and rejecting
15 all of Armstrong's affirmative defenses as to the enforceability of contract. [Ex. DD to Request
16 for Judicial Notice.]

17 **February, 1995.** Five days after Judge Thomas awarded the Church damages,
18 Armstrong sent a letter to the Church, which he copied to the media, discussing his claimed
19 Scientology knowledge and experiences, and stating that he refused to stop breaching the
20 agreement. [Ex. UU to Bartilson Dec.] On February 23, the Church filed a motion for
21 summary adjudication of the last cause of action in the Breach Case, which seeks a permanent
22 injunction prohibiting Armstrong from further breaching the Agreement. [Ex. EE to Request
23 for Judicial Notice.] That same day, Armstrong voluntarily substituted himself as counsel in
24 propria persona in place of attorneys Ford Greene and Paul Morantz. [Ex. FF to Request for
25 Judicial Notice.]

26 **March 10, 1995.** Using his lack of legal representation, Armstrong sought and
27 obtained a two-week extension of the hearing on the Church's pending motion for summary
28 adjudication, claiming that he needed additional time in which to find a new lawyer. [Ex. GG

1 to Request for Judicial Notice.]

2 March 17, 1995. The Church filed a motion for summary adjudication of four more
3 of the breach of contract claims, seeking additional liquidated damages of \$200,000. [Ex. HH
4 to Request for Judicial Notice.]

5 March 21, 1995. Armstrong sent Church counsel a letter stating that "[d]ue to a
6 spiritual condition which I am unable to control resulting in a psychological incapacitation" he
7 could not proceed with either his own deposition, set for March 22, 1995, or that of witness
8 Jerry Solfvin, set for March 23, 1995. Armstrong offered no alternative dates, but requested
9 that Ms. Bartilson "contact [him] in a few days to see if these depositions can be rescheduled."
10 [Ex. VV to Bartilson Dec.] The discovery referee found that Armstrong's refusal to attend his
11 deposition was without justification. [Ex. II to Request for Judicial Notice.]

12 March 29, 1995. Armstrong sought and obtained another continuance of the hearings
13 on the Church's pending summary adjudication motions, again claiming that he was spiritually
14 incapacitated, and looking for an attorney. The motions were reset to be heard and decided on
15 April 21, 1995. [Ex. JJ to Request for Judicial Notice.]

16 April 5, 1995. Armstrong breached the settlement agreement yet again, this time
17 by publishing a lengthy missive on the Internet, which discussed his claimed Scientology
18 knowledge and experiences. [Ex. WW to Bartilson Dec.]

19 April 7, 1995. On the day that his oppositions to the pending summary adjudication
20 motions were due to be filed, Armstrong sought another continuance of the hearing. This was
21 denied by Judge Thomas. [Bartilson Dec., ¶15.]

22 April 17, 1995. Armstrong told Church counsel that he expected to be filing more
23 papers opposing the summary adjudication motions later in the week, even though the hearing
24 on the motions was set for April 21, 1995, and the time for filing any papers had passed. He
25 also stated that he would be available to reschedule his deposition later in the week. [Bartilson
26 Dec., ¶16.]

27 April 18, 1995. Armstrong gave Church counsel notice that he intended to appear
28 the next day before Judge Thomas, and seek yet another continuance of the hearing on the

1 Church's pending dispositive motions. At 5:00 p.m., he called back to say that he would not
2 be appearing ex parte after all. [Bartilson Declaration, ¶ 17.]

3 April 19, 1995. Armstrong filed a petition in bankruptcy, two days before Judge
4 Thomas was due to rule on the summary adjudication motions and 30 days before trial was due
5 to begin, staying the entire pending action. [Ex. KK to Request for Judicial Notice.]

6 III. ARGUMENT

7 Section 362(d)(1) of the Bankruptcy Code provides that the bankruptcy court can grant
8 relief from the automatic stay imposed by Section 362(a) "for cause. . . ." What constitutes
9 "cause" for relief from stay is within the court's discretion, and decided on a case by case basis.
10 In re Hohol, 141 B.R. 293, 297 (M.D.Pa. 1992); In re Dixie Broadcasting, Inc., 871 F.2d
11 1023, 1026 (11th Cir. 1989); Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 814
12 F.2d 844 (1st Cir. 1987); In re Holtkamp, 669 F.2d 505 (7th Cir. 1982).

13 underlying the bankruptcy code and the competing interests of the debtor and other
14 parties in interest. In re Hohol, supra, 141 B.R. at 297. It is well-established, however, that

15 Where neither prejudice to the bankruptcy estate nor interference with the
16 bankruptcy proceeding is demonstrated, the desire of a stayed party to proceed
in another forum is sufficient cause to warrant lifting the automatic stay.

17 In re Larkham, 31 B.R. 273, 276 (D.Ver. 1983); citing, In re Rounseville, 20 B.R. 892 (D.R.I.
18 1982); In the Matter of Rapco Foam, 23 B.R. 692 (W.D.Wis. 1982). As demonstrated below,
19 granting the Church relief from stay in order to pursue its state court claims to final judgment
20 would neither prejudice the bankruptcy estate nor interfere with the bankruptcy proceeding.
21 Rather, permitting the state court to conclude the pending matter would have the salutary effect
22 of liquidating the Church's damages claims against Armstrong, in a court that is familiar with
23 both the state law issues presented and the factual dispute between the parties. Because the state
24 court proceeding is virtually on the eve of trial, with potentially dispositive motions for summary
25 judgment already fully briefed, allowing the state court to make its determination will, in fact,
26 aid this Court, rather than interfere with its proceedings.

27 Moreover, although courts commonly consider many factors in determining whether relief
28 from stay is appropriate,

1 [I]n most of the cases in which unsecured creditors have been granted
2 relief, two (2) factors have coalesced: (1) the Debtor has engaged in some
3 morally culpable conduct which the moving party seeks to undo in a court action;
4 and (2) the creditor does not seek to pursue assets of the estate or is prohibited
5 from doing so, although given relief to pursue certain remedies against the
6 debtor.

7 In re Hohol, 141 B.R. at 297, (quoting, In re Stranahan Gear Co., Inc., 67 B.R. 834 (E.D.Pa.
8 1986)).

9 Here, the facts demonstrate that Armstrong deliberately impoverished himself, then began
10 breaching his Agreement with the Church in the hope of "persuading" the Church to pay him
11 yet again. His defense of the state action has consisted of imposing delay after delay, and, at
12 the last possible minute, seeking relief from decisions he is unhappy with by filing for
13 bankruptcy. Since the Church is not seeking to pursue any assets of the estate through its
14 pending state court action, it should be permitted, under these standards as well, to bring that
15 action to a conclusion.

16 As will be seen below, analysis of this case under any of the commonly used rubrics
17 employed by courts in deciding relief from stay motions can logically result in only one
18 conclusion - relief should be granted here.

19 **A. The Requested Relief Promotes Judicial Economy As The State
20 Court Action, Stayed On The Eve Of Trial, Involves Issues Of
21 State Law Wholly Unrelated To These Proceedings.**

22 By far the largest number of relief from stay cases proceed with an analysis of whether
23 or not the requested relief will promote the policy of judicial economy. For example in In re
24 Castlerock Properties, 781 F.2d 159, 163 (9th Cir. 1986), the Ninth Circuit recognized that
25 perhaps the most important factor was that a state court trial was about to take place.

26 Similarly, in In re Universal Life Church, Inc., 127 B.R. 453, 455 (E.D. Cal. 1991),
27 the Internal Revenue Service sought relief from stay to allow a tax court action to proceed. In
28 granting the relief requested, the bankruptcy court found the tax court's special expertise in the
area to be of paramount importance. The tax court action was begun in 1985 and had been
pending for nearly four years when, on the eve of trial, the debtor filed a motion seeking to
amend its tax court petition to permit the use of a different installment method of accounting.

1 On the day after this motion to amend was denied, the debtor filed a Chapter 11 petition, which
2 automatically stayed the tax court proceedings. In a holding squarely applicable here, the court
3 stated: "The automatic stay in this case should be modified to permit the tax court to finish what
4 it had nearly completed." Id.

5 The state court action in this case has been pending for over three (3) years, since it was
6 first commenced in 1992. Armstrong's defense in that action has never been that he did not
7 commit the breaches complained of, but rather that he had valid defenses to the Church's claim
8 for breach. In granting the preliminary injunction in May 1992, Judge Sohigian considered and
9 rejected those defenses. His analysis was accepted by the Court of Appeal. The Church's
10 motions for summary adjudication of Armstrong's cross-complaints were granted. The Church
11 has also successfully obtained summary judgment on two claims for breach of the agreement,
12 and has been awarded \$100,000 in liquidated damages. On April 21, the state court was to
13 decide motions for summary judgment on four more claims for breach, which would have
14 resulted in another \$200,000 in liquidated damages, and also on the Church's motion for
15 summary judgment of its cause of action for a permanent injunction. Trial was set for May 18.
16 As in In re Universal Life Church, Inc., supra, the automatic stay should be modified to "permit
17 [the Marin County Superior Court] to finish what it had nearly completed." 127 B.R. at 455.

18 Indeed, relief from stay is proper in this instance to permit the state court to decide issues
19 of state law which are within its unique province. This is because "[a] clear congressional policy
20 exists to give state law claimants a right to have claims heard in state court." In re Castlerock
21 Properties, supra, 781 F.2d at 163. In In re Revco D.S., Inc., 99 B.R. 768 (N.D. Ohio 1989),
22 for example, the court held that it should abstain from deciding certain questions raised in the
23 bankruptcy proceedings, because the proceeding was based upon a state law claim which could
24 not have been commenced otherwise in a court of the United States, and which could be timely
25 adjudicated in the state court action. See also, Allard v. Benjamin (in re Delorean Motor Co.),
26 49 B.R. 900 (E.D.Mi. 1985); In re Castlerock Properties, supra, 781 F.2d. at 161-163. Here,
27 as in Revco, the issues presented by the state case are purely state law issues; the Church could
28 not have commenced the state court action in a federal court for want of any subject matter

1 jurisdiction; and the issues will indeed be timely adjudicated if the relief from stay sought here
2 is granted.

3 The Church here seeks relief from stay only to the extent necessary to allow its breach
4 of contract claims to become liquidated and to adjudicate its claim for a permanent injunction.
5 The proposed order specifically provides that, if those claims are decided in the Church's favor,
6 it will take no action to enforce its claims against the estate. The fact that the Church does not
7 seek to pursue assets of the estate should be given significant weight. In re Hohol, 141 B.R.
8 at 297. Further, as the court recognized in In re Olmstead, 606 F.2d 1365, 1367-1368 (10th
9 Cir. 1979), it is certainly appropriate for a bankruptcy court to defer any determination which
10 it might make until the creditor's claim was liquidated in another court of competent
11 jurisdiction.⁹

12 Indeed, allowing the state court action to proceed will simply make this court's task
13 easier. On point is In re Turner, Jr., 55 B.R. 498 (N.D. Ohio 1985). In Turner, the creditors
14 sought relief from stay to prosecute a claim under the so-called "RICO" statute. This motion
15 was granted, since, as the court stated:

16 [I]t will often be more appropriate to permit proceedings to continue in their place
17 of origin, when no great prejudice to the bankruptcy estate would result, in order ...
to relieve the bankruptcy court from many duties that may be handled elsewhere.

18 55 B.R. at 450.

19 Many judicial duties involved in the state court action have already been handled
20 elsewhere, to Armstrong's apparent chagrin. Permitting the state court to finish its task will
21 simply aid this court, and result in significant judicial economy.

22
23 ⁹ See also In re Holtkamp, 669 F.2d 505 (7th Cir. 1982) (Interest of judicial economy militated
24 in favor of permitting suit to go forward because trial date had been set, witnesses subpoenaed
25 and determination of claim did not require expertise of bankruptcy court); In re Brentanos, Inc.,
36 B.R. 90 (S.D.N.Y. 1983) (Bankruptcy court's denial of relief from stay reversed and action
26 remanded where California action regarding guarantor involved issues of state law and stay of
27 California action was not necessary to efficient an effective disposition of bankruptcy
28 proceeding); In re Harris, 85 B.R. 858 (Bkrcty.D.Colo. 1988) (relief from stay warranted so
that creditors could establish right to participate in Real Estate Recovery Fund established right
to participate in Real Estate Recovery Fund established to pay judgments against licensed broker
or salesman).

1 **B. Armstrong's Dilatory Conduct Makes Relief From Stay**
2 **Particularly Appropriate Here.**

3 Armstrong's dilatory conduct in the underlying action also mandates in favor of granting
4 the Church the relief requested. In In re Kemble, 776 F.2d 802 (9th Cir. 1985), for example,
5 the underlying action involved a contract dispute, and allegations that the debtor, Kembel, was
6 involved in the formation of a corporation to which assets were transferred in violation of
7 security agreements. That action proceeded to judgment against Kembel, which was affirmed
8 as to liability but remanded for retrial on the issues of damages. Prior to the retrial, Kembel
9 filed a bankruptcy petition. Before that filing, the parties prepared for the damages retrial and
10 Kembel undertook substantial discovery in a "dilatory manner". Id. at 804. The Ninth Circuit
11 was careful to point out that the district court's lifting of the stay was proper on the basis of
12 judicial economy alone, see Part III B, supra, but agreed that the district court had also properly
13 considered Kembel's dilatory conduct in granting the relief from stay. Id. at 807.

14 Similarly, in In re GSVC Restaurant Corp., 10 B.R. 300 (S.D.N.Y. 1980) the creditor-
15 landlord had brought state court eviction proceedings in which "the debtor exhausted all
16 conceivable legal means for opposing eviction." Id. at 301. The debtor's eviction was actually
17 scheduled, and the debtor's petition filed only two hours before the scheduled eviction.

18 Here, Armstrong waited to file his petition until two days before the Church's dispositive
19 motions were due to be decided, and after more than almost three years had elapsed, after a
20 preliminary injunction had been entered against him, after a court of appeal had affirmed
21 granting of that injunction, after summary judgment had been granted to two claims against him,
22 after his cross-complaints had been dismissed, and after virtually all of his affirmative defenses
23 had been similarly adjudicated against him. Moreover, the history of the underlying case
24 demonstrates that Armstrong's uniform response to an unfavorable ruling has been to "judge
25 shop," i.e., to do anything to change the forum. The case bounced from Los Angeles, to Marin,
26 to Los Angeles, and back again to Marin. All told, four superior court judges and one court of
27 appeal have now considered and rejected his defenses to the contract. He should not be
28 permitted, by the filing of a bankruptcy petition, to "judge shop" yet again, and ask this Court

1 to redetermine the efficacy of his state law defenses.

2 **C. Balancing The Hardships, The Court Should Lift The Stay.**

3 In determining whether a stay should be lifted, courts consider whether prejudice will
4 result to the debtors estate if the relief is granted, and then consider whether "the hardship to
5 the creditor resulting by continuing the stay considerably outweighs the hardship to the debtor
6 by modification of the stay." In re Harris, 85 B.R. 858, 860 (Bkrcty.D.Colo. 1988).

7 Here, the Church has already demonstrated that permitting the state court action to
8 proceed to a full determination of the permanent injunction and liability for damages will not
9 prejudice the debtors' estate in any way. Moreover, Armstrong will not suffer any significant
10 hardship if the relief is granted. Although Armstrong is likely to argue that the cost of defending
11 the state court action could be a hardship to him, "no case has found the cost of defending, by
12 itself, to be 'great prejudice' as to bar modification of the stay." Id. at 860, quoting, In re
13 Phillips 40 B.R. 194, 197 (D.Colo. 1984).

14 In sharp contrast, the hardship to the Church from the stay is significant. The Church's
15 request for relief from stay includes, inter alia, a request that this Court permit the Marin
16 Superior court to decide plaintiff's motion for summary judgment of its claim for permanent
17 injunction and, if that motion is denied, that trial of this claim be allowed to proceed. In May
18 of 1992, the Church was required to post a \$70,000 bond for issuance of the preliminary
19 injunction. This amount was posted, in the form of a cash bond, which remains in the custody
20 of the court. If the Church obtains a permanent injunction by either motion for summary
21 judgment or trial, that judgment will not require the positing of a bond, and the Church will be
22 entitled to return of its \$70,000. At the time that Armstrong filed his petition, judgment on the
23 permanent injunction question was imminent. Requiring the Church (which has already obtained
24 an uncollectible judgment against Armstrong of \$100,000) to wait throughout the pendency of
25 Armstrong's bankruptcy before it can obtain a final adjudication of the injunction, and return
26 of its \$70,000, is a significant, and unnecessary, hardship.

27 ///

28 ///

1 **D. Relief From Stay Is Particularly Appropriate With Respect To**
2 **The Injunctive Relief Claim.**

3 As set forth above, the primary purpose of the §362 automatic stay is "to prevent the
4 depletion of the bankruptcy estate assets during the course of the bankruptcy proceeding." In
5 re Hohol, supra, 141 B.R. at 298, citing In re Larkham, supra, 31 B.R. at 276. Hohol in
6 particularly instructive here, as the court there dealt with a request to lift the automatic stay in
7 order to allow the creditor plaintiff to seek compliance with a state court injunction enjoining
8 breach of employment and noncompetition agreements. The court specifically recognized that,
9 by its very nature, a request for injunctive relief does not threaten depletion of the bankruptcy
10 estate, which would not be "endangered by the plaintiff's request for injunctive relief." In re
11 Hohol, supra, 141 B.R. at 298. Similarly, in In re Lamberjack, 149 B.R. 467 (N.D. Ohio
12 1992), relief from stay was granted to allow the plaintiff to enforce a state court mandatory
13 injunction. Lamberjack is noteworthy because the state court injunction was mandatory,
14 requiring the debtor the take the affirmative action of removing a gas pump from a boating
15 channel. The Lamberjack court considered the traditional factors usually looked to by
16 bankruptcy courts, including whether relief would result in complete resolution of the issue, the
17 connection with the bankruptcy proceeding, whether a specialized tribunal was necessary,
18 interests of judicial economy, whether the parties were ready for trial on the injunctive
19 proceeding, the impact of the stay and balance of the harms, and, significantly, the likelihood
20 that the creditor would prevail on the claim pending in the state court. Id. at 470-71. Accord,
21 In re Cherry, 78 B.R. 65 (Bkrtcy.E.D.Pa. 1987) (Relief from stay granted to allow the creditor
22 to pursue prospective injunctive relief to remedy the conduct of the debtor.)

23 Here, as discussed above, all of those factors militate in favor of granting the requested
24 relief. In addition, Plaintiff's likelihood of success on the merits is great. Judge Sohigian
25 specifically found that the Church was likely to prevail on the merits in granting the preliminary
26 injunction. The Church has already prevailed on summary judgment, on two (2) causes of
27 action. Armstrong's affirmative defenses and cross-complaint have been similarly adjudicated
28 against him. There is every reason to believe that the pending summary judgment motions

1 would be decided in the Church's favor. Even assuming Armstrong could raise a triable issue
2 of fact and thus defeat summary judgment, there is every reason to believe that the Church will
3 be successful at trial of its claim for a permanent injunction.

4 Thus, regardless of the court's decision concerning whether relief from stay should be
5 granted to pursue damage claims, the court should recognize that under the applicable case law,
6 relief from stay is certainly warranted to allow the Church to pursue its claims for injunctive
7 relief.

8 IV. CONCLUSION

9 The Church is entitled to relief from the automatic stay provisions of Section 362 so that
10 it can pursue, to conclusion, its state court claims for breach of contract. The limited relief
11 which the Church requests will permit the state court to complete its nearly-finished task of
12 determining the extent of Armstrong's liability to the Church, and to determine whether
13 Armstrong's future conduct should be proscribed by a permanent injunction. Neither of these
14 actions will prejudice the proceedings before this court, Armstrong, or the debtor's estate.
15 However, if the relief is not granted, the Church will suffer significant prejudice at the hands
16 of a debtor who has already manipulated the courts into providing delays in the determination
17 of the Church's claims for more than three years. Under these circumstances, this Court should
18 grant the Church's motion for relief from stay.

19 Dated: April 26, 1995

Respectfully submitted,

20 Andrew H. Wilson
21 Shauna T. Rejkowski
WILSON, RYAN & CAMPILONGO

22 MOXON & BARTILSON

23 By: Laurie J. Bartilson *LL*
24 Laurie J. Bartilson

25 Attorneys for Creditor
26 CHURCH OF SCIENTOLOGY INTERNATIONAL
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On April 26, 1995, I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RELIEF FROM STAY on interested parties in this action,

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] true copies thereof in sealed envelopes addressed as follows:

GERALD ARMSTRONG
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

Jeffrey G. Locke, Trustee
P.O. Box 488
Kentfield, CA 94914-0488

[X] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on April 26, 1995, at Los Angeles, California.

[] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

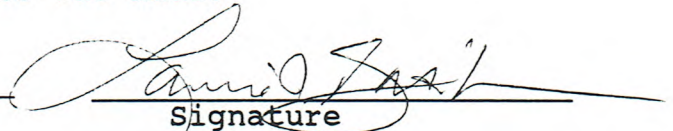
Executed on April 26, 1995, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Harrie Bardiken

Print or Type Name


Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)